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LABOUR & EMPLOYMENT DEPARTMENT NOTIFICATION

The 23rd February 2007

No. 1609 — li/ 1 - 351/1990 (Pt.) - L.E. — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th December 2006 in I.D. Case No. 44 of 1991 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of the Member-Secretary, Cadre Committee, Keonjhar Central Co-operative Bank Ltd., Keonjhar, District Keonjhar and its workman Shri Mandardhar Boitai At/P.O. Raital, Via Sainkul, District Keonjhar was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT
SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 44 OF 1991

Dated the 30th December 2006

Present :

Shri P. K. Mahapatro, LL. B.,
Presiding Officer,
Labour Court, Sambalpur.

Between :

The Management of
the Member-Secretary,
Cadre Committee,
Keonjhar Central Co-operative
Bank Ltd., Keonjhar,
Dist. Keonjhar.

.. First Party—Management

And

Their Workman
Shri Mandardhar Boitai,
At/P.O. Raital,
Via Sainkul,
Dist. Keonjhar.

.. Second Party— Workman

Appearances :

For the First Party — Management

.. Shri R. N. Debta,
Advocate, Sambalpur.

For the Second Party— Workman

.. Shri Trilochan Pattanaik,
Advocate, Sambalpur.

AWARD

This case arises out of a reference made by the Government of Orissa, Labour & Employment Department under Sections 10 and 12 of the Industrial Disputes Act, 1947 vide memo No. 12030(3), dated the 28th August 1991 for adjudication of disputes scheduled below :

"Whether the termination of services of Shri Mandardhar Boitai, ex-Cadre Secretary of the Keonjhar Central Co-operative Bank Ltd., Keonjhar by the Member-Secretary, Cadre Committee, Keonjhar Co-operative Bank Ltd., Keonjhar with effect from the 12th January 1988 is legal and/or justified ? If not, what relief Shri Boitai is entitled to ?"

2. The workman in his statement of claim has taken a plea that his explanation in relation to the charges framed against him were not considered in a proper manner and the disciplinary authority took their decision without considering the legal and factual aspect involved in it, as a result, the order of suspension and the order of the termination were illegal and unjustified. He has also taken the plea that from the date of suspension, he has not received a single pie as subsistence allowance and even he has not received the pay of June and July of 1983 and such actions of the management are suggestive to conclude that they have taken actions in an inhuman manner and without observing the principles of natural justice. He has also taken the plea that his prayer that the amount which he is entitled to get from the management may be adjusted towards the claim of the management was not even taken into account and the same may be taken up by this Court and by way of mutual adjustment the dispute be settled. To suffice his stand available in the statement of claim, the workman has filed the copy of the explanation furnished by him and the copy of the charge sheet framed against him. To add to this a copy of the order passed by the Assistant Registrar of Service Co-operative Societies in Dispute Case bearing No. 5/84-85 is also filed wherein Keshaba Ch. Rout, ex-President of the Balarampur Service Co-operative Society was the Defendant. To sum up, the workman has prayed for settling his dispute with the management by calling for the records from the parties.

3. The Member-Secretary of the Cadre Committee of Keonjhar Central Co-operative Bank Limited has filed his written statement by stating that the workman while working as Secretary of Balarampur Service Co-operative Society had misappropriated the Society's fund by manipulating records and by fabricating books of accounts and as his explanation was far from satisfactory, so he was placed under suspension and then a Disciplinary Proceeding was initiated against him and by taking note of the fact that he (workman) has admitted the misappropriation, a domestic enquiry was ordered and then it was taken up by observing the principles of natural justice. It is also the case of the management that after giving full opportunity to the workman, an order of termination was passed, as a result his plea that he was not given proper opportunity to defend his case before the Enquiry Officer and that he was not even given a hearing by the Disciplinary Authority cannot be easily swallowed. With regard to the adjustment of amount, it is the specific case of the management in Para. 12 of the written statement that in view of the order passed by the management that the suspension period of the workman be treated as such, he is not entitled to get any amount from the management and the claim for the adjustment of the same cannot be accepted. To sum up, the management side has justified its claim and according to it there is no reason of taking a lenient view in relation to the action of the management.

4. The workman on, dated the 27th April 1993 has filed another petition in shape of an explanation in relation to the charges framed against him by the management. Though such a petition is foreign to the Industrial Disputes Act and Rules framed thereunder, but it was accepted by this Court. What is more surprising is that in the prayer portion of the above referred petition a prayer has been made to reinstate the workman in service with full back wages. It is also mentioned in it that he is the only earning member of the family and his case may be considered, as because the Defendants will suffer irreparable loss for any action taken against him.

5. By taking note of the pleadings of the parties, the following issues have been settled in this case:—

ISSUES

- (i) "Whether the domestic enquiry was fair and proper ?
- (ii) Whether the termination of services of the workman by the management w.e.f 12-1-1988 is legal and/or justified ?
- (iii) If not, to what relief the workman is entitled ?"

6. Before going to deal with the issues settled in this case it would be better to first of all mention some facts which in my opinion are relevant for better appreciation of the points raised by the parties. In pursuance of the Orissa Industrial Disputes Rules, 1959 the workman is entitled to file a statement of claim to substantiate his claim. In this case, the workman has transmitted his statement of claim by post and then notice was issued to the other side to file the written statement. In his statement of claim, the workman has given emphasis to the charges framed against him and the explanation furnished by him. What is more surprising is that in the body of the statement of claim there is no specific challenge with regard to the follow up actions taken by the management. In a faint manner in Para. 3 of the statement of claim it is stated that his explanation presented in relation to the charges framed against him were not favourably considered on the point of law and equity and accordingly a copy of the same is attached with it for consideration by this Court. In the same Para. non-payment of suspension allowance and salary for the month of June and July, 1983 were averred and according to him, the said actions of the management is not only unjustified but also inhuman. Similarly after receiving the copy of the written statement, the workman has filed another petition on, dated the 27th April 1993 which as per the Rules is to be treated as a rejoinder. In the body of the same, the workman has given explanations pertaining to the charges framed against him at the time of the domestic enquiry. In my opinion his explanations with regard to the charges framed against him is to be adjudicated with legal strength by the Enquiry Officer and the jurisdiction of this Court at this stage, is nothing but to scrutinise as to whether the enquiry is fair and proper or not. It may be pertinent to mention here that while scrutinising the preliminary issue pertaining to the fairness of the domestic enquiry, this Court has given an opinion that the domestic enquiry was not fair and proper and as per law the management was asked to furnish evidence to justify the same before this Court. Accordingly evidence was led and then an award was passed. But the Hon'ble Court in O. J. C. No. 1302 of 1995 was pleased to quash the same and remanded the matter to this Court for fresh disposal. The above order of the Hon'ble Court was passed on, dated the 9th February 2005 and then a fresh hearing was taken up by this Court. In my opinion the rejoinder, dated the 27th April 1993 has no relation in relation to the points raised by the management in the written statement and it only relates to the charges framed against the workman during the course of the domestic enquiry. The above action of the workman is not in consonance with the Rules and in view of the background as discussed above it has a limited role to play in this case.

7. In order to substantiate the issues, the management side has examined Duryodhan Prusty an employee of S.C.C. Bank as witness No. 1 and Mahendra Kumar Chakra, Secretary of the Saladei Service Co-operative Society as witness No. 2. In addition to the oral evidence, the management has also proved some documents which are marked as Exts. 1 to 26. From the side of the workman, he is figured as the only witness and he has also filed some documents which are marked as Exts. A to E. After the order of remand passed by the Hon'ble High Court in O.J.C. No. 1302 of 1995, the workman has adduced further evidence to buttress his claim, but the management side has declined to adduce further evidence. The memo filed by the learned counsel for the management in this regard on, dated the 17th November 2006 is relevant for this purpose. Keeping the above background in view, I will now deal with the issues settled in this case.

FINDINGS

8. *Issue No. (i)* —This issue is already answered against the management and in favour of the workman vide Order dated the 19th May 1993.

9. *Issue Nos. (ii) and (iii)* —These issues relate to the legality and justifiability of the order of termination passed against the workman with effect from the 12th January 1988 and whether the workman is entitled for any other relief. It may be pertinent to mention here that while ensuring issue No. (i), it was opined by this Court that the domestic enquiry was not conducted in a fair and proper manner. It is the consistent view of the Apex Court that a defective enquiry stands on the same footing as 'no enquiry' and in such situation the Labour Court would have jurisdiction to go into the facts and the employer would have to satisfy the Labour Court that on the facts, the order of dismissal or discharge was proper. It is also a well settled law that fair opportunity in enquiry means that the employee charged with the misconduct should be given every reasonable opportunity to prove his innocence. In this connection, the stand of the workman in his statement of claim is highly limited. He has only stated in Para. 3 of the statement of claim that his explanation was not considered favourably and that during the suspension period, he has not received a single pie as suspension allowance. As per law, pleadings in Industrial Disputes need not be strictly confirmed to the provisions of the Civil Procedure Code. Even some of the Hon'ble High Courts have taken the view that the workers generally are illiterate persons and hence pleadings in Industrial Adjudication cannot be strictly considered. But it is also the view of some of the Hon'ble Courts that the rules of natural justice require that the pleadings must at least be such as to give sufficient notice to the other parties of the case it is called upon to meet. So in any case, the pleadings must be definite for laying the foundation of the evidence in the case. In this case there is no specific pleading as to how the principles of natural justice were not followed during the course of the domestic enquiry. There is no whisper of word in the pleading that he was not given opportunity of adducing relevant evidence on which he had relied in his explanation and that the evidence from the side of the management was taken up in his absence or he does not get the opportunity of cross-examining them. In his evidence which he adduced on the 29th September 1994 (prior to the order of the remand of the Hon'ble High Court) there is no direct allegation that rules of fair play and natural justice were not observed and he was not given proper opportunity to defend his own case. He has simply stated in his evidence that by way of grudge, he was placed under suspension while he was working at Hatadihi Branch and then charges were framed which were not based on sound data and during the domestic enquiry those were proved to be false. He has also stated about the factum of misappropriation which according to him was held by the A.R.C.S., Anandpur to have been committed by the President of the Society, as a result, there is absolutely no materials against him to conclude that he had misappropriated the Society fund. Very surprisingly all the material evidence adduced by him are not available in his pleading. However, the learned counsel for the management has cross-examined him at length pertaining to the factum of misappropriation and in view of the above position, the misappropriation aspect is to be scrutinised by this Court and if it is *prima facie* held to be true then the action of the management is not to be interfered with. Here, it may be relevant to mention that in Industrial Law the acts of theft, fraud and dishonesty have been treated as acts of misconduct justifying dismissal. It is the consistent view of the Hon'ble Apex Court and other Hon'ble Courts that acts of 'dishonesty' and 'fraud' constitute misconduct of serious nature warranting the penalty of dismissal. So far the standard of proof is concerned it is the settled law that he who asserts must prove. So at the first instance it is on the party who has asserted it and then as the proceeding will go on, it may shift to the other side. The management side by examining two witnesses has *prima facie* proved the misappropriation said to have been committed by the workman. The workman has also cross-examined the witnesses at length and in his cross-examination, he has admitted certain facts which are congenial to conclude that he is a party to the misappropriation alleged against him. The learned counsel for the management in his written argument has pointed out the facts available in the evidence of the witnesses of the management

touching the misappropriation committed by the workman. The workman in his statement of claim has admitted that the amount due from him may be adjusted towards his claim amount. In his evidence the workman has admitted certain facts which are lending strength to conclude that the workman has misappropriated the fund of the management. His evidence available in his cross-examination Para. 12 is relevant for the above purpose. The explanation given by him pertaining to charge No. 2 is also a relevant circumstance against him and the same is congenial to conclude that he has utilised the money of the management for his personal benefit. So the standard of proof required in a case of the present type is available in the evidence of the witnesses of management. Normally it is for person putting forward the claim to establish the facts and circumstances supporting his claim. The two witnesses of the management have established the factum of the misappropriation and in view of the above circumstance, the onus shifts on the workman to suffice that he is innocent. But in his evidence there is no substantial material to arrive into such a conclusion. The documents proved from the side of the management are also lending additional support to the allegation of misappropriation. Though with regard to payment of advance money to Shri Keshaba Rout the President of the Society there is dearth of conclusive material in the evidence of the two witnesses of the management, but there are sufficient materials to conclude that he has utilised the money of the Society for his personal gain. Very surprisingly, the workman has no say with regard to the fourth allegation levelled against him in the charge sheet. In his rejoinder while answering the above charge, the workman has failed to explain properly under what circumstances money was paid to N. K. Jena. Though he has stated in his rejoinder that on different dates the same was collected from N. K. Jena, but in his evidence he has failed to suffice that it was duly accounted for. So the same is also a circumstance to infer that he is a party to the misappropriation as alleged by the management. As such, the allegation of misappropriation is proved against the workman in consonance with the standard required in a proceeding of the present type. In view of my above conclusion, the misconduct is of serious nature and the penalty of dismissal imposed by the management cannot be held to be illegal. There is no reason to extend the discretionary jurisdiction available in Section 11-A of the Industrial Disputes Act. Hence the following Award :—

AWARD

The reference is answered on contest against the workman and in support of the management. The termination of service of Shri Mandardhar Boitai, ex-Cadre Secretary of the Keonjhar Central Co-operative Bank Ltd., Keonjhar by the Member - Secretary, Cadre Committee, Keonjhar Co-operative Bank Ltd., Keonjhar with effect from the 12th January 1988 is legal and justified. The workman is not entitled to get any relief from the management.

Dictated and corrected by me.

P. K. MAHAPATRO
30-12-2006
Presiding Officer
Labour Court, Sambalpur

P. K. MAHAPATRO
30-12-2006
Presiding Officer
Labour Court, Sambalpur

By order of the Governor
N. C. RAY
Under-Secretary to Government